IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Application No.2423 of 2007

Mr.A.V.More & anr. Applicants
Vs.
State of Maharashtra & anr. Respondents

Mr.Ganesh Gole for applicants.
Mr.D.P.Adsule, APP for State.

CORAM: B.H.MARLAPALLE, J.

September 10, 2007.

P.C.

. Heard Mr.Gole, the learned counsel for the applicants who are the accused in C.C. No. 150/S/2001 subsequently registered as 2651/S/2002 and now registered as C.C. No.1288/SW/2005. The said case has been filed under Section 138 of the Negotiable Instruments Act, 1881 and in respect of the dishonour of five different cheques in the total sum of Rs. 10,19,201/-.

. Initially the complaint was filed on behalf of the complainant - Company i.e. Gulf Oil India Ltd., Andheri, Mumbai through its Regional Accounts Manager, Mr. R. Sridhar. Subsequently Mr. Suhas Karkhanis came on record in place of Mr.Sridhar and thereafter Mr.Somnath Sinha was substituted in place

of Mr.Suhas Karkhanis. Finally Mr. Kishore Valunj has come on record in place of Mr.Somnath Sinha as well. Mr.Somnath Sinha had filed his affidavit in examination-in-chief and thereafter Mr. Kishore Valunj also filed his affidavit in examination-in-chief. It was stated by the company that Mr.Sinha had left the company's employment and his affidavit was not pressed and it would not be relied upon as evidence. When Mr.Kishore Valunj filed his affidavit by way of examination-in-chief, the accused were called upon to examine him and instead of doing that the accused filed an application at Exhibit 36 and prayed for declaring the affidavit of Mr.Kishore Valunj as null and void and to call upon Mr. Somnath Sinha to step in the witness box to cause his appearance. This application has been rejected by the impugned order dated 11/7/2007.

. The learned Metropolitan Magistrate, 28th Court at Esplanade, Mumbai noted that the complainant - company had stated that the affidavit in examination-in-chief filed by Mr. Somnath Sinha would not be relied upon and Mr.Kishore Valunj was substituted in place of Mr.Somnath Sinha. The

company further stated that the affidavit in examination-in-chief of Mr.Kishore Valunj would be relied upon by the company in support of its complaint and consequently the accused were called upon to cross-examine Mr.Valunj. Under these circumstances, the trial Court held that the affidavit of Mr.Valunj cannot be held to be null and void and when Mr.Sinha was stated to have left the employment of the company, he could not be called upon to step in the witness box when his affidavit in examination-in-chief was not going to be relied upon by the company and the complainant. The impugned order, therefore, does not suffer from any errors apparent on the face of the record.

. The application is rejected summarily.

(B.H.MARL